IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1256 OF 2006

Ramabai Nandu Poojari ...Petitioner

vs.

The State of Maharashtra ...Respondent

Mr.A.M.Saraogi with Mr.S.K.Chaurasia for the Petitioner
Ms S.V.Gajare A.P.P. for State

CORAM: A.S.OKA,J.
DATE : OCTOBER 19,2006.

ORAL JUDGMENT:

1. On the last date the Advocate for the Petitioner and the learned A.P.P. were put to notice that the Petition will be heard finally at admission stage. Accordingly, I have taken up the Petition for final hearing.

2. The Petitioner who is a woman has challenged the order of externment passed against her under the provisions of Bombay Police Act, 1951. The Applicant was externed for a period of two years from the districts of Thane, Mumbai, Mumbai Suburban and Raigad. An Appeal was preferred by the Petitioner. By order dated 7th June 2006, the Appellate Authority modified the order and confined it to the Districts of Thane, Mumbai and Mumbai Suburban.

3. The learned Advocate for the Petitioner submitted that apart from other legal contentions, it is obvious that the fact that the order was excessive is accepted by the Appellate

Authority. He submitted that the Appellate Authority after accepting the fact that the order was excessive ought to have set aside the said order. He submitted that even otherwise, on merits, the order of externment could not have been passed.

4. The learned A.P.P. for State relied upon the decision of the Apex Court in case of Pandharinath Rangnekar Vs. Deputy Commissioner of Police ([(1973) 1 S.C.C. page 372) and submitted that the Appellate Authority was justified in passing the order extending to three districts. The learned A.P.P. submitted that no interference is called for as a substantial relief has already been granted by the Appellate Authority in favour of the Petitioner.

5. I have considered the submissions made by the learned Advocates for the parties. Perusal of the show cause notice issued to the Petitioner and order of externment shows that the alleged prejudicial activities of the Petitioner are confined to various areas falling within the limits of Kalwa Police Station, District Thane. The order of externment places reliance on the offences registered against the Petitioner at Kalwa Police Station. No reason is assigned for extending the order of externment to the Districts of Mumbai and Raigad.

6. In case of Pandharinath Rangnekar (supra), the Apex Court upheld the view taken by this Court by which this Court

confirmed the order of externment passed relating to Mumbai and Thane Districts. The Apex Court accepted the view taken by this court as the view pertained to the matters of local colour and conditions. The view taken by this court was that Mumbai and Thane are intimately connected considering the several modes of transport such as suburban local trains and other factors. This Court had observed that one of other factors is the contiguous industrial area and had held that the said two districts form a single unit. Obviously, this cannot be said about the districts of Thane and Raigad. Suburban railway service is not available for connecting two districts and it is impossible to say that two districts form one unit.

7. In a given case, order of externment need not be restricted to the areas in which illegal activities are carried out. However, the area to which the order of externment is to operate must be chosen to meet the situation created by objectional acts of the Petitioner. In this case no reasons are assigned by the Authority for extending the order externment to Raigad District. The fact that the order could not have been extended to Raigad District has been accepted by the Appellate Authority by confining the order to the Districts of Thane, Mumbai and Mumbai Suburban. It is thus obvious that the Appellate Authority itself found the order to be excessive. In view of the decision of this Court in case of Umar Mohammed Malbari Vs. K.P.Gaikwad, Deputy

Commissioner of Police and another (1988 Mh.L.J. page 1034), if an order of externment is found to be excessive it cannot be modified. The order is required to be set aside as being illegal. As stated earlier, the Appellate Authority has itself come to the conclusion that the order was excessive. Therefore, the Appellate Authority ought to have set aside the order of externment.

9. Hence, only on the point that the order is excessive, the Petition must succeed. Accordingly, rule is made absolute in terms of prayer clause (a).

10. It is made clear that notwithstanding this order, the concerned authorities will be free to proceed in accordance with law against the Petitioner.

JUDGE